
SENATE BILL 6318

State of Washington 64th Legislature 2016 Regular Session

By Senators Baumgartner, Conway, Litzow, and Hobbs

Read first time 01/14/16. Referred to Committee on Health Care.

1 AN ACT Relating to ownership, maintenance, and operation of an
2 office within the practice of dentistry; amending RCW 18.32.020; and
3 adding a new section to chapter 18.32 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 18.32.020 and 2011 c 336 s 477 are each amended to
6 read as follows:

7 Subject to section 2 of this act, a person practices dentistry,
8 within the meaning of this chapter, who (1) represents himself or
9 herself as being able to diagnose, treat, remove stains and
10 concretions from teeth, operate or prescribe for any disease, pain,
11 injury, deficiency, deformity, or physical condition of the human
12 teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by
13 any means or methods to diagnose, treat, remove stains or concretions
14 from teeth, operate or prescribe for any disease, pain, injury,
15 deficiency, deformity, or physical condition of the same, or take
16 impressions of the teeth or jaw, or (3) owns, maintains, or operates
17 an office for the practice of dentistry, or (4) engages in any of the
18 practices included in the curricula of recognized and approved dental
19 schools or colleges, or (5) professes to the public by any method to
20 furnish, supply, construct, reproduce, or repair any prosthetic

1 denture, bridge, appliance, or other structure to be worn in the
2 human mouth.

3 The fact that a person uses any dental degree, or designation, or
4 any card, device, directory, poster, sign, or other media whereby he
5 or she represents himself or herself to be a dentist, shall be prima
6 facie evidence that such person is engaged in the practice of
7 dentistry.

8 X-ray diagnosis as to the method of dental practice in which the
9 diagnosis and examination is made of the normal and abnormal
10 structures, parts, or functions of the human teeth, the alveolar
11 process, maxilla, mandible or soft tissues adjacent thereto, is
12 hereby declared to be the practice of dentistry. Any person other
13 than a regularly licensed physician or surgeon who makes any
14 diagnosis or interpretation or explanation, or attempts to diagnose
15 or to make any interpretation or explanation of the registered shadow
16 or shadows of any part of the human teeth, alveolar process, maxilla,
17 mandible or soft tissues adjacent thereto by the use of X-ray is
18 declared to be engaged in the practice of dentistry, medicine, or
19 surgery.

20 The practice of dentistry includes the performance of any dental
21 or oral and maxillofacial surgery. "Oral and maxillofacial surgery"
22 means the specialty of dentistry that includes the diagnosis and
23 surgical and adjunctive treatment of diseases, injuries, and defects
24 of the hard and soft tissues of the oral and maxillofacial region.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.32
26 RCW to read as follows:

27 (1) A person does not own, maintain, or operate an office within
28 the practice of dentistry for the purposes of this chapter if:

29 (a)(i) A person who, pursuant to a management or other personal
30 services agreement, provides services to a dentist licensed pursuant
31 to this chapter or a group practice of dentists licensed pursuant to
32 this chapter meets the following standards:

33 (A) The agency agreement is set out in writing and signed by the
34 parties;

35 (B) The agency agreement covers all of the services the agent
36 provides to the principal for the term of the agreement and specifies
37 the services to be provided by the agent;

38 (C) If the agency agreement is intended to provide for the
39 services of the agent on a periodic, sporadic, or part-time basis,

1 rather than on a full-time basis for the term of the agreement, the
2 agreement specifies exactly the schedule of the intervals, their
3 precise length, and the exact charge for the intervals;

4 (D) The term of the agency agreement is for not less than one
5 year, does not exceed that which is reasonable and necessary for a
6 commercially reasonable business purpose of the agreement, and in no
7 event exceeds five years;

8 (E) The aggregate compensation paid to the agent over the term of
9 the agreement is set in advance, is consistent with fair market value
10 in arms-length transactions and is not determined in a manner that
11 takes into account the volume or value of any referrals or business
12 otherwise generated between the parties;

13 (F) The services performed under the agency agreement do not
14 involve the counseling or promotion of a business arrangement or
15 other activity that violates any state or federal law; and

16 (G) The aggregate services contracted for do not exceed those
17 which are reasonably necessary to accomplish the commercially
18 reasonable business purpose of the services.

19 (ii) The equity interests in a group practice of dentists that is
20 party to an agency agreement authorized by this section must be held
21 by dentists licensed pursuant to this chapter who practice in the
22 group, and the group must meet the definition of "group practice" in
23 section 1877(h)(4) of the federal social security act and related
24 regulations.

25 (iii) For purposes of this subsection (1)(a):

26 (A) "Agent" means any person, other than a bona fide employee of
27 the principal, who has an agreement to perform services for, or on
28 behalf of, the principal.

29 (B) "Principal" means a dentist licensed pursuant to this chapter
30 or group of dentists licensed pursuant to this chapter.

31 (C) Compensation is considered "set in advance" only if: (I) The
32 aggregate compensation over the term of the agreement is fixed; and
33 (II) it does not include any percentage-based component.

34 (D) Compensation is considered "consistent with fair market
35 value" only if: (I) It is consistent with the value in arm's-length
36 transactions; and (II) it is included in a service agreement as the
37 result of bona fide bargaining between well-informed parties to the
38 agreement who are not otherwise in a position to generate business
39 for the other party.

1 (iv) Nothing in this subsection may be construed to authorize
2 investments in group practices unless those investments meet all of
3 the standards set forth in 42 C.F.R. 1001.952(p);

4 (b)(i) A person who is party to a management or other personal
5 services agreement with a dentist licensed pursuant to this chapter
6 or a group practice of dentists licensed pursuant to this chapter and
7 who leases space to such a dentist or group practice of dentists
8 meets the following standards:

9 (A) The lease agreement is set out in writing and signed by the
10 parties;

11 (B) The lease covers all of the premises leased between the
12 parties for the term of the lease and specifies the premises covered
13 by the lease;

14 (C) If the lease is intended to provide the lessee with access to
15 the premises for periodic intervals of time, rather than on a full-
16 time basis for the term of the lease, the lease specifies exactly the
17 schedule of the intervals, their precise length, and the exact rent
18 for the intervals;

19 (D) The term of the lease is for not less than one year;

20 (E) The aggregate rental charge is set in advance, is consistent
21 with fair market value in arm's-length transactions and is not
22 determined in a manner that takes into account the volume or value of
23 any referrals or business otherwise generated between the parties;
24 and

25 (F) The aggregate space rented does not exceed that which is
26 reasonably necessary to accomplish the commercially reasonable
27 business purpose of the rental.

28 (ii) For purposes of this subsection (1)(b), "fair market value"
29 means the value of the rental property for general commercial
30 purposes. "Fair market value" does not include adjustment to reflect
31 the additional value that one party, either the prospective lessee or
32 lessor, would attribute to the property as a result of its proximity
33 or convenience to sources of referrals or business otherwise
34 generated between the parties.

35 (c)(i) A person who is party to a management or other personal
36 services agreement with a dentist licensed pursuant to this chapter
37 or a group practice of dentists licensed pursuant this chapter and
38 who leases equipment to such a dentist or group practice of dentists
39 meets the following standards:

1 (A) The lease agreement is set out in writing and signed by the
2 parties;

3 (B) The lease covers all of the equipment leased between the
4 parties for the term of the lease and specifies the equipment covered
5 by the lease;

6 (C) If the lease is intended to provide the lessee with use of
7 the equipment for periodic intervals of time, rather than on a full-
8 time basis for the term of the lease, the lease specifies exactly the
9 schedule of the intervals, their precise length, and the exact rent
10 for the interval;

11 (D) The term of the lease is for not less than one year;

12 (E) The aggregate rental charge is set in advance, is consistent
13 with fair market value in arm's-length transactions and is not
14 determined in a manner that takes into account the volume or value of
15 any referrals or business otherwise generated between the parties;
16 and

17 (F) The aggregate equipment rental does not exceed that which is
18 reasonably necessary to accomplish the commercially reasonable
19 business purpose of the rental.

20 (ii) For purposes of this subsection (1)(c), "fair market value"
21 means the value of the equipment when obtained from a manufacturer or
22 professional distributor. "Fair market value" does not include
23 adjustment to reflect the additional value one party, either the
24 prospective lessee or lessor, would attribute to the equipment as a
25 result of its proximity or convenience to sources of referrals or
26 business otherwise generated between the parties.

27 (2)(a) A management or other personal services agreement between
28 a person and a dentist licensed pursuant to this chapter or a group
29 practice of dentists licensed pursuant this chapter must be
30 independent of any space or equipment lease agreement between the
31 person or any affiliate of the person and the dentist or group
32 practice of dentists.

33 (b)(i) The person or affiliate is presumed to have been operating
34 an office for the practice of dentistry within the meaning of RCW
35 18.32.020 if, within seven hundred thirty days of the termination of
36 a management or other personal service agreement between the agent
37 and the dentist or group practice of dentists, the agent or any
38 affiliate of the agent:

1 (A) Terminates a space or equipment lease agreement with the
2 dentist or group practice of dentists without the consent of the
3 dentist or group practice of dentists; or

4 (B) Enters into a new management or other personal service
5 agreement or a new space or equipment lease agreement with a
6 different dentist or group practice of dentists in the same location.

7 (ii) The agent or affiliate may rebut the presumption in (b)(i)
8 of this subsection (2) with clear and convincing evidence that the
9 space or equipment lease agreement was terminated and the new
10 management or other personal service agreement or new space or
11 equipment lease agreement, if any, were executed for a permissible
12 purpose. For purposes of this subsection, an affiliate of an agent
13 includes, without limitation, any person that has a direct or
14 indirect ownership or investment interest or compensation arrangement
15 with the agent.

16 (3) The legislature finds that the practices covered by this
17 section are matters vitally affecting the public interest for the
18 purpose of applying the consumer protection act, chapter 19.86 RCW.
19 The unlicensed practice of dentistry by a person who is party to a
20 management or other personal service agreement with a dentist
21 licensed pursuant to this chapter or a group practice of dentists
22 licensed pursuant to this chapter is not reasonable in relation to
23 the development and preservation of business and is an unfair or
24 deceptive act in trade or commerce and an unfair method of
25 competition for the purpose of applying the consumer protection act,
26 chapter 19.86 RCW.

27 (4) Any employee, independent contractor, or health care
28 professional who reports, in good faith, to the department of health
29 or to any agency or branch of federal, state, or local government
30 practices that may constitute the unlicensed practice of dentistry by
31 a person who is a party to a management or other personal service
32 agreement with a dentist licensed pursuant to this chapter or group
33 practice licensed pursuant to this chapter is a whistleblower. The
34 provisions of RCW 4.24.500 through 4.24.520, providing certain
35 protections to persons who communicate to agencies and branches of
36 federal, state, and local government, apply to these reports, and a
37 person who has been subjected to reprisal or retaliatory action has
38 the remedies provided under chapter 49.60 RCW and RCW 4.24.500

1 through 4.24.520. The identity of a whistleblower must remain
2 confidential.

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